

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

IN RE:	§	CASE NO: 17-50011G
Sammy Almendarez	§	
Dawn Zavala Almendarez	§	
DEBTOR(S)	§	CHAPTER 13

**DEBTORS' MOTION TO MODIFY CHAPTER 13 PLAN
AND SECOND REQUEST FOR ATTORNEY'S FEES**

AN ORDER WILL BE ENTERED GRANTING THE RELIEF REQUESTED HEREIN WITHOUT FURTHER HEARING UNLESS A WRITTEN OBJECTION AND REQUEST FOR HEARING IS FILED WITH THE CLERK WITHIN TWENTY-ONE (21) DAYS AFTER THE DATE OF ISSUANCE OF THIS NOTICE. ANY SUCH OBJECTION MUST ALSO BE SERVED UPON THE MOVING PARTY AND UPON ALL OTHER PERSONS INDICATED ON THE CERTIFICATE OF SERVICE ATTACHED TO THIS PLEADING.

TO THE HONORABLE JUDGE Craig A. Gargotta:

Sammy Almendarez and Dawn Zavala Almendarez, ("Debtors") move to modify their Chapter 13 Plan under 11 U.S.C. § 1329 and Bankruptcy Rule 3015.

1. Jurisdiction

Jurisdiction is proper under 28 U.S.C. § 1334. This is a "core-proceeding" pursuant to 28 U.S.C. § 157 (b)(2). Further, this is a "contested matter" governed by Bankruptcy Rule 9014.

2. Background

The Debtors filed a Chapter 13 bankruptcy petition on January 2, 2017. The court confirmed the Chapter 13 Plan on February 28, 2017.

3. Grounds for Modification

The Debtors experienced a substantial and unexpected change in circumstances since the entry of the order confirming the plan. Debtors became delinquent with their mortgage payments because they have been struggling with their budget since filing and eventually missed two mortgage payments. Debtors now understand how to budget and feel that they can continue in this case. As a result, Debtors are required to add post-petition mortgage arrears of \$2,778.24

into the chapter 13 plan per an Agreed Order Modifying Stay entered into between Debtor and Ditech Financial.

4. Terms to be Modified

Debtors request that the Chapter 13 Plan be modified to allow \$2,778.24 in post-petition mortgage arrears be added into the plan. The modified plan payment will begin June 2018.

The following reflect the terms of the current plan and of the proposed modified plan:

Chapter 13 Plan Terms	Current Plan	Proposed Plan
Plan Payment	\$1,175.00	\$1,275.00
Term (from date of Confirmation)	59 months	59 months
Plan % (approx. dividend to unsecured creditors)	22%	24%
ACP (Applicable Commitment Period)	3 years	

The following identifies the specific monthly payments payable by the Trustee through the plan to the secured and priority creditors:

Creditor	Current Plan	Proposed Plan
DITECH Financial LLC (pre petition)	Pro rata	Pro rata
DITECH Financial LLC (post petition)	Pro rata	Pro rata
NPRTO Texas LLC	\$75.00	75.00
American Credit Acceptance	\$395.00	395.00
Amercian Credit Acceptance	\$250.00	\$250.00
J. Todd Malaise - Base Attorney's Fees	Paid	Paid
J. Todd Malaise - Admin Priority (this motion)		*see below

These modifications reflect the only terms sought to be modified by this motion. All existing terms and provisions of the current Chapter 13 Plan not modified above remain in effect.

Further, the dividend payable to unsecured creditors is greater than the value of non-exempt property and greater than the amount that the unsecured creditors would receive if this case was converted to a Chapter 7.

5. Request for Attorney's Fees

Counsel for Debtor incurred additional attorney fees and costs related to this matter and asks that he be awarded \$874.46 (\$843.00 attorney fees and \$31.46 expenses) as reasonable and necessary services and that said amount be paid as an administrative claim by the Trustee through the Chapter 13 Plan payable in full upon entry of this order or as funds become

available. Payment of this claim may delay payment of the scheduled monthly payment on secured and priority claims. A description of these services is attached as "Exhibit A". These services were unanticipated and were not included in the base, "no look" fee award. A history of the attorney fees awarded in this case is attached hereto as "Exhibit B".

PRAYER

Wherefore, premises considered, Debtor prays that this Court approve this Motion to Modify Chapter 13 Plan and Second Request for Attorney's Fees.

Respectfully submitted,
MALAISE LAW FIRM
909 NE Loop 410, Suite 300
San Antonio, Texas 78209
Telephone: (210) 732-6699
Telecopier: (210) 732-5826

By: _____

J. Todd Malaise, SBN 00796984
David C. Werner, SBN 00797651
Steven G. Cennamo, SBN 04045600
Teresa K. Howard, SBN 24049025
ATTORNEYS FOR DEBTOR

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on May 31, 2018, service of a copy of the attached has been accomplished by **CM/ECF to Mary K. Viegelahn, Chapter 13 Trustee**, and by first class mail, postage paid, or hand delivered to the parties in interest listed below and to all parties listed on the attached mailing matrix.

J. Todd Malaise
David C. Werner
Steven G. Cennamo
Teresa K. Howard

Label Matrix for local noticing
0542-5
Case 17-50011-cag
Western District of Texas
San Antonio
Mon May 28 17:29:31 CDT 2018

Ad Astra Recovery
7330 W 33rd St Ste 118
Wichita, KS 67205-9370

Attorney General of the US
Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530-0009

Broadway Finance
Broadway Finance
1115 SW Military Drive, Suite 102
San Antonio, TX 78221-1698

Cap Fin Co
216 Broadway
San Antonio, TX 78205-1924

Credit Management, LP
The Offices of Credit Management, LP
PO Box 118288
Carrollton, TX 75011-8288

Ditech Financial LLC fka Green Tree Servicin
P.O. Box 6154
Rapid City, South Dakota 57709-6154

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

Midwest Recovery Syste
PO Box 899
Florissant, MO 63032-0899

Rent-A-Center
803 Castroville Rd.
San Antonio, TX 78237-3148

United States Trustee (SMG513)
U.S. Trustee's Office
615 E. Houston, Suite 533
P.O. Box 1539
San Antonio, TX 78295-1539

Afni
PO Box 3427
Bloomington, IL 61702-3427

Bexar County
c/o Bradley S. Balderrama
711 Navarro, Suite 300
San Antonio, TX 78205-1749

Business & Professional Services
Attn: Bankruptcy
621 N. Alamo St.
San Antonio, TX 78215-1836

Central Finance
4400 Fredericksburg Ste102
San Antonio, TX 78201-1969

Ditech
Attn: Bankruptcy
PO Box 6172
Rapid City, SD 57709-6172

Ditech Financial LLC,
c/o BDFTE LLP
4004 Belt Line Rd, Ste 100
Addison, TX 75001-4320

Jh Portfolio Debt Equities LLc
5757 Phantom Dr Ste 225
Hazelwood, MO 63042-2429

NPRT0 Texas, LLC
256 West Data Drive
Draper, UT 84020-2315

Robertson Anschutz Vettters
10333 Richmond Ave, Ste 550
Houston, TX 77042-4115

U.S. BANKRUPTCY COURT
615 E. HOUSTON STREET, ROOM 597
SAN ANTONIO, TX 78205-2055

American Credit Acceptance
961 E Main St
Spartanburg, SC 29302-2185

Bexar County
c/o Don Stecker
Linebarger Goggan Blair & Sampson
711 Navarro, Ste. 300
San Antonio, TX 78205-1749

CODILIS & STAWIARSKI, P.C.
ATTN: BANKRUPTCY DEPARTMENT
400 N. SAM HOUSTON PARKWAY EAST #90
HOUSTON, TX 77060-3548

Credit Acceptance
25505 West 12 Mile Rd
Suite 3000
Southfield, MI 48034-8331

Ditech Financial LLC
P.O. Box 6154
Grand Rapids, South Dakota 57709-6154

ERC/Enhanced Recovery Corp
8014 Bayberry Rd
Jacksonville, FL 32256-7412

Mega Furniture
2301 SW Military Dr
San Antonio, TX 78224-1406

(p)PORTFOLIO RECOVERY ASSOCIATES LLC
PO BOX 41067
NORFOLK VA 23541-1067

SANTANDER CONSUMER USA, INC.
P.O. BOX 560284
DALLAS, TX 75356-0284

San Antonio Loans
4535 Fredricksburg Rd St
San Antonio, TX 78201-6515

Santander Consumer USA
PO Box 961245
Ft Worth, TX 76161-0244

Sun Loan Company
803 Castroville Rd Ste 3
San Antonio, TX 78237-3153

US Attorney's Office
601 NW Loop 410, Ste 600
San Antonio, TX 78216-5597

United States Trustee - SA12
US Trustee's Office
615 E Houston, Suite 533
PO Box 1539
San Antonio, TX 78295-1539

VA Regional Office
Office of District Counsel
2515 Murworth Dr
Houston, TX 77054-1603

Dawn Zavala Almendarez
5119 Duke Field
San Antonio, TX 78227-4725

J. Todd Malaise
909 NE Loop 410, Suite 300
San Antonio, TX 78209-1315

J. Todd Malaise02
Malaise Law Firm
909 NE Loop 410, Suite 300
San Antonio, TX 78209-1315

J. Todd Malaise04
Malaise Law Firm
909 NE Loop 410, Suite 300
San Antonio, TX 78209-1315

Mary K Viegelaahn
Chapter 13 Trustee
10500 Heritage Blvd Suite 201
San Antonio, TX 78216-3631

Sammy Almendarez
5119 Duke Field
San Antonio, TX 78227-4725

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

Portfolio Recovery
PO box 41067
Norfolk, VA 23541

End of Label Matrix	
Mailable recipients	41
Bypassed recipients	0
Total	41

Billing Statement

Exhibit A

Malaise Law Firm	Time and Expenses
909 N.E. Loop 410, Suite 300	
San Antonio, TX 78209	
(210) 732-6699	
Total Time:	\$843.00
Total Expenses:	\$31.46
Total Billed:	\$874.46

Matter: Sammy Almendarez 17-50011G

DATE	STAFF	RATE	S	BRIEF DESCRIPTION	AMOUNT
02/05/18	EBE	\$95	1.2	In office conference with Debtors regarding MTLs. Receive some docs.	\$114.00
02/23/18	MAM	\$95	0.3	Receive & review TMTD for no annual. Letter to Debtors.	\$28.50
02/27/18	TLG	\$95	0.4	Call to Debtor for in office appointment regarding MTLs and TMTD	\$38.00
03/06/18	EBE	\$95	0.5	In office conference with Joint Debtor regarding TMTD for no annual. Need add'l info	\$47.50
03/09/18	EBE	\$95	0.5	Receive docs from Debtors. Prepare response to TMTD.	\$47.50
03/09/18	JTM	\$295	0.2	Approve and sign response to TMTD for no annual	\$59.00
03/09/18	EBE	\$95	0.2	File response for TMTD with court.	\$19.00
04/09/18	EBE	\$95	0.8	Review pay stubs and update Debtors income and expenses. Draft amended I and J	\$76.00
04/19/18	EBE	\$95	0.2	Phone call to Joint Debtor regarding TMTD.	\$19.00
04/23/18	EBE	\$95	0.5	Email exchange with IRS regarding Debtors' 2015 and 2017 liabilities	\$47.50
04/24/18	JTM	\$295	0.2	Review pay stubs and approve amended I and J	\$59.00
04/24/18	EBE	\$95	0.3	File amended I and J with court. Upload pay stubs to the portal. Email to trustee office	\$28.50
05/07/18	EBE	\$95	0.2	Receive & review withdrawal of TMTD. Call to Debtors.	\$19.00
05/09/18	EBE	\$95	0.7	Draft motion to modify	\$66.50
05/10/18	EBE	\$95	0.4	Draft timesheet for services	\$38.00
05/18/18	EBE	\$95	0.2	Prep file for attorney review	\$19.00
05/21/18	EBE	\$95	0.1	Email exchange with trustee's office regarding modificaiton	\$9.50
05/31/18	JTM	\$295	0.3	Review, approve and sign modification	\$88.50
05/31/18	EBE	\$95	0.2	File modification with court.	\$19.00
TOTAL FOR FEES					\$843.00
			JTM	Todd Malaise (Attorney) @ \$295.00 per hour	
			SGC	Steven G. Cennamo (Associate Attorney) @ \$295.00 per hour	
			DCW	David C. Werner (Associate Attorney) @ \$265.00 per hour	
			TKH	Teresa K. Howard (Associate Attorney) @ \$265.00 per hour	
			MAM	Margaret Munoz (Legal Assistant) @ \$95.00 per hour	
			ORI	Oriana Towels (Legal Assistant) @ \$95.00 per hour	
			GMP	Gina M. Perez (Legal Assistant) @ \$95.00 per hour	
			TLG	Tiffany L. Gomez (Legal Assistant) @ \$95.00 per hour	
EXPENSES		Cost	Pages		
Copies		0.21	76	Response to TMTD & Motion to Modify	\$15.96
Postage		0.5	31	Response to TMTD & Motion to Modify	\$15.50
TOTAL EXPENSES					\$31.46

Please remit payment to:

Malaise Law Firm
909 N.E. Loop 410, Suite 300
San Antonio, TX 78209

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	§	
DEBTOR(S)	§	CHAPTER 13

ATTORNEY'S FEE EXHIBIT

DATE FILED	FEES AWARDED	FEES PENDING	DOCUMENT FILED
3/27/2018	\$589.42	\$0.00	Application for Attorney Fees/AO MTLS

SUMMARY

Fees Awarded at Confirmation:	\$3,600.00
Total post confirmation fees awarded:	\$589.42
Total post confirmation fees pending:	\$0.00

"EXHIBIT B"